IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Likhmi Chand vs. The State of Rajasthan.

D.B.Cri. Appeal No.60/1985

Under Section 374 (2) Cr.P.C. against the judgment dated 07.02.85 passed by the Sessions Judge, Churu, in Sessions Case No.36/1984.

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Date of Judgment: 05th September, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.Vikram Choudhary for the appellant.
Mr.JPS.Choudhary, Public Prosecutor.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

The present appeal has been filed by the accused appellant, being aggrieved by the judgment of the court of Sessions Judge , Churu in Sessions Case No. 36/1984 decided on 07.02.85.

The prosecution case started on the basis of a report

lodged with police Station Tara Nagar on 14.04.85 at about 08.00 in the morning by Chhailu Ram. According to this report it was informed that in the village of the complainant Chhailu Ram, sons of Adu Ram are living for about 12 years. Their father Adu Ram , his brother Banwarilal, Jagmal and his brother and Likhmi Chand are cultivating their lands. There Adu Ram , Ratan Kumar and Shreechand have their houses built separately. Chandgi Ram and Likshman Ram have also their houses nearby. Adu Ram had gone out on holi. Wife of Shreechand had also gone out. Shreechand was living alone. On 12.04.84 Likhmi Chand went and asked his neighbors that from the house of his father, Shree Chand has made theft and the stolen articles should be returned. On that day nothing was followed up. In th night he slept. At about 01.00 AM Ratan Kumar came to the complainant and informed him that Shreechand had slept in the courtyard of his house . In the night he all of a sudden heard a suppressed shout. When he woke up he saw Likhmi Chand and Shera Ram running away from there. When he went near Shree Cand, found him in agony with injuries. He then informed Kesar Ram, Chimna Ram, Jagdish, etc. He called all of them at home and found Shree Chand lying dead there.

On the basis of this information the first information

report was lodged and investigation was conducted. Charge sheet was filed in the court of Judicial Magistrate , Rajgarh who committed the case to the court of Sessions. Accused Likhmi Chand and Shrera Ram were apprehended for the alleged crime. Charge under section 302 IPC was framed against Likhmi Chand and against Shera Ram under section 234 IPC. The accused denied the charges and claimed trial. At the trial 13 witnesses were examined. The accused were examined under Section 313 Cr.P.C., who denied the implication. Defence witnesses were also examined.

After the trial, the trial court came to the conclusion that no case is made out against Shera Ram and he was given benefit of doubt and was acquitted of the charges levelled against him. The trial court, on the basis of the statement of PW/2 Ratan Kumar, found that offence can be held proved against Likhmi Chand as a knife was recovered at the instance of accused Likhmi Chand , which was stained with blood of human origin and the same blood group was found on the clothes of the accused and, therefore, the case was held proved against him.

The learned counsel for the appellant urged that there is no evidence on record to the effect as to who the actual assailant was?

The best case of the prosecution can be said to be made out of the evidence of PW/2 Ratan Kumar, who says that when he woke up, saw the accused Shera Ram and the appellant running away. He recognised them, because their faces were towards him. Admittedly it was dead of the night , the witness was woken up from slumber and the accused were running away . In these circumstances , expecting the accused to face this witness is a thought which is unreal. A person running away would always face towards the direction to which he is running and a person who suddenly wakes up from slumber can hardly identify a person who is running away. The most interesting part is that he does not allege that the persons who were running away had any weapon with them. Therefore, to conclude that either of these persons had inflicted the injuries is a thing which cannot be digested. Further, this witness when asked ,whether he has stated that the face of the accused were towards him in the police statement, he has said that he has not stated so in the police statement. Thus, the very foundation of the prosecution case, which is the testimony of PW/2 Ratan Kumar ,is not of any consequence.

PW/3 Mst.Bimla has turned hostile. PW/4 Jagdish Prasad is a witness of investigation, who in cross-examination states that Ratan Kumar had not informed him that he had seen the accused

running. He was only talking that accused Likhmi Chand had killed the deceased. How, he killed , this was not disclosed. PW/5 is Dr.Sahdev Singh, PW/6 Subhash Chandra is a hostile witness. PW/7 Jai Narain Singh is the witness of investigation. PW/8 Nathu Singh is again a witness of investigation. PW/9 Liyakat Ali is also a witness of investigation. PW/10 Ram Swaroop has turned hostile. So also PW/11 Prem Singh. PW/12 Chimna Ram is a witness of hearsay. PW/13 Mahipal Singh is a witness of investigation. Thus, we are left with the testimony of only one witness i.e, PW/2 Ratan Kumar, who does not say in his statement that he has seen the deceased being inflicted injuries by the appellant or the acquitted accused.

The only other evidence against the accused , which has been relied by the trial court, is recovery of weapon of offence and clothes of the accused allegedly stained with human blood of 'O' group. The recoveries are corroborative piece of evidence. Thus there is no substantive piece of evidence alleging that the accused was guilty of the offence. From the testimony of the witnesses PW/2 Ratan Kumar, we do not find that he says that the accused has inflicted injuries. He has only seen him running away. So also was seen Shera Ram. If Shera Ram was acquitted , there is no reason why

accused Likhmi Chand should not be acquitted. May be accused has not killed the brother of PW/2 Ratan Kumar and he is being implicated to settle the family dispute. Thus, the learned counsel for the appellant states that the appellant deserves to be acquitted of the charges levelled against him.

Per contra, the learned Public Prosecutor has stated that why would a real brother implicate another brother for a murder, if it was not a real case.

The findings of the trial court are based on the basis of the evidence of the eye witness and the recovery and, therefore, it cannot be said that the trial court was not right in convicting and sentencing the accused appellant.

We have heard the learned counsel for the parties and have given our thoughtful consideration to the material available on record.

The only witness available on record is PW/2 Ratan Kumar. Admittedly he has not seen any accused causing injuries to the deceased. There were two accused named by him who were seen

running away from the scene of occurrence. Thus, either of them was the assailant. No weapon was assigned by PW/2 Ratan Kumar to any one of the accused, at the stage when he saw them running. Thus, it cannot be said that who, out of them, inflicted the injuries. One of them have been acquitted. As one of them having been acquitted, the case of the other one is not distinguishable, because as per the actual participation is concerned, there is no direct evidence. Both of them have seemed to have been running away from the scene of occurrence. The only circumstance is that from the appellant, a weapon has been recovered and his clothes have been found to be stained with human blood. But these circumstances can be used , only as a corroborative piece of evidence but cannot be used to establish a connection with the crime singularly. There having been no other evidence,the only circumstance that can be pressed is, the running away of the appellant with the another accused , who has been acquitted.

In these circumstances, we are unable to accept the testimony of PW/2 Ratan Kumar. When he woke up from slumber there was dark night and the accused were running away. This statement by itself cannot be a piece of evidence which has a shade of truth. Also whether it can be expected that he identified the

accused having seen them for a flicker of a moment. To add colour to it he has said that while running, their faces were towards him. This improvement is enough to hold that he was out and out to depose against the accused.

It is interesting that regarding the fact of the faces having towards him, was not stated in the police statement. Otherwise also when one is running away then normally his face would be towards the side to which he is running. Therefore, the fact of identification in these circumstances loses weight. There is hardly any material available on record to convince us to sustain the conviction of accused appellant and thus we feel that there is no sufficient material available on record to sustain the conviction, as recorded by the trial court.

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

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